

4. The facts relating to the cases are stated in brief. The assessee herein belongs to Gauti Group. The assessee along with other group concerns/family members was subjected to search operations under section 132 of the Act on 09-03-2015 by the Investigation wing of the Income tax department. Consequent thereto, the assessments were completed in the hands of the assessee for the above said years under section 143(3) read with section 153A of the Act.

5. The issues contested by the assessee relates to making charges and wastage claim. The revenue is contesting the partial relief granted in respect of wastage claim. The Ld CIT(A) has confirmed the additions made towards making charges in both the years under consideration and hence the assessee is in appeal in respect of the same. The Ld CIT(A) gave partial relief in respect of wastage claim in AY 2013-14 and hence both the parties are in appeal before us on that issue.

5.1 We heard the parties on these issues and perused the record. We notice that identical additions made in the assessee's group concern named M/s Saurav Jewellers Pvt Ltd have been deleted by the co-ordinate bench, vide its order dated 28-10-2022 passed in ITA Nos. 999 & 998/Mum/2021 and ITA Nos. 2504/Mum/2021 on a detailed reasoning. For the sake of convenience, we extract below the order passed by the co-ordinate bench in the above said case:-

“3.The ground Nos.2-4 raised by the assessee for the A.Y. 2014-15 are challenging the disallowance of making charges amounting to Rs.49,83,491/-.

3.1.We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of manufacturing and trading of gold bearings and export of gold jewellery. The assessee is deriving business income which has been offered to tax in the return of income and had filed its return of income for the A.Y.2014-15 on 31/10/2014 declaring total income of Rs.3,63,52,110/-. A search and seizure action was carried out u/s.132(1) of the Act along with other cases of Gauti Group on 09/03/2015. The parent company of Gauti group is M/s.

Sumatichand Gauti Jewellers pvt ltd. Consequent upon search, assessee's case was centralised and the jurisdiction vested with the Id. AO stated hereinabove. It was found in the search action that Gauti group has been concealing its correct income by obtaining accommodation entries in the form of introduction of share capital from companies and inflating making charges and wastage so claimed in the books of accounts of various group entities. During the search operation, parallel books of accounts of Gauti group were found to have been placed at premises known as 17/3, S. N. Das Lane, Kolkata. Accordingly, soft copy in the form of hard disc containing the back up of soft data taken by the assessee in pen drive was also seized during the search action. During the course of search, Shri Kirti Kumar Gauti in his statement recorded u/s.132(4) of the Act on 11/03/2015 confirmed that the premises at 17/3, S.N.Das Lane, Kolkata-700 050 is the secret premises kept by the group for the specific purpose of maintaining parallel data of four entities of the group i.e. Sumatichand Gauti Jewellers Pvt. Ltd., Saurabh Jewellers Pvt. Ltd., (assessee herein), SEG Exports Pvt. Ltd., and M/s. Soorajmal Gauti, proprietary concern of Shri Sumatichand Gauti. Such data was maintained in MS Excel sheets. Yearwise MS Excel sheets were prepared on the basis of issue and receipt vouchers handled by Shri Kirti Kumar Gauti with karigar working for the said entities of the group. The Id. AO concluded that data contained in such MS Excel Sheets reveal that the group had been indulging in claiming excess amount of making charges and wastage in regular books of accounts of the said four entities of the group. Admittedly, the said excel sheets contained the data of raw gold received from various banks, the gold issued to the Karigars - Shri Lob Ghorai and Shri Golok Patra, among other karigars, jewellery received from them after the job work and the closing balance of gold lying with Karigar.

3.2.The search operations were also conducted in the premises of Karigars Shri Lob Ghorai and Shri Golok Patra on 09/03/2015. The seized papers impounded from residential premises of Shri Lob Ghorai on 09/03/2015 was marked as LKG/03. Similarly papers were seized from the residential premises of Shri Golok Patra during the course of search on 09/03/2015. These papers were confronted with Shri Kirit Kumar Gauti who admitted in his statement on oath recorded u/s.131 of the Act on 11/08/2015. Further commission u/s.131(1)(d) of the Act was issued on DDIT (Investigation), Unit 1(3) Kolkata requesting him to record a statement on oath u/s.131 of the Act from Shri Lob Ghorai. Accordingly statement on oath was recorded from Shri Lob Ghorai on 21/08/2015 wherein it was confirmed that the typed excel sheets found and seized contain the real transaction done which has issue of raw gold, purity, jewellery given back to M/s. Sumatichand Gauti Jewellers Pvt. Ltd., and its other concerns, closing balance etc. The Id. AO concluded that the excel sheets maintained is nothing but parallel books of accounts / parallel data maintained by the assessee containing real transactions.

3.3. The Gauti group is engaged in the business of manufacturing of gold jewellery and trading in jewellery. Bullion trading is carried out from both the places i.e. Mumbai and Kolkata. However, the jewellery manufacturing process is carried out and controlled only by the group entities based in Kolkata. The business operations of bullion trading takes place in the domestic market whereas the business operation in relation to jewellery manufacturing are mostly done in the export market. The jewellery is manufactured in Kolkata and the same is generally sold in the export market. In the domestic market, the group entities buy duty paid gold from banks and sell it to various jewellers in the local market. Apart from sale of bullion these entities also sell manufactured jewellery item in the domestic market. As regards exports of jewellery items manufactured by the group entities based in Kolkata, the following process is involved:-

- a) Receipt of orders
- b) Import / purchase of raw material / gold bars from banks on credit.
- c) **Giving Orders to Karigars for Bullion Manufacturing:-**

The gold purchase from banking channel is issued to various karigars along with specifications, item code etc. According to Id. AO, Karigars are paid making charges and are allowed to keep the gold wastage as part of their payment. At the time of issuance of gold to karigars, the issue voucher is prepared in the name of concerned karigar and the entry for the same is made in the stock register. Apart from getting the manufactured jewellery from Karigar, the group entities also have a dedicated manufacturing unit in SEZ i.e. Mani Kanchan at Kolkata. These entities import gold duty free.
- d) **Receipt of Finished Jewellery:-**

After the jewellery is manufactured, the same is received from Karigar and issued receipt vouchers and the corresponding entry is made in the stock register.
- e) Export of finished jewellery.

3.4. The Id. AO observed that from 30-35 Kargiars working for the group entities which manufacture jewellery items and give it back to the group entities for which they charged certain rate / amount of making charges and / or wastage.

3.5. The statement of Karigars i.e. Shri Lob Ghorai and Shri Golok Patra were recorded during the course of search wherein they had stated that actual making charges received by them is Rs.2/- per gram whereas cheque they had received was for Rs.13/- to 18/- per gram and difference is given back in cash to the assessee. Shri Kirit Gauti incharge of Kolkata operations of the group, in his statement recorded during the course of search proceedings accepted to that actual making charges paid of Rs.3/- per gram. The excel sheets termed as alleged parallel books seized from the premises showed that actual making charges were lower than making charges debited in the books of the assessee. These excel sheets for the

period 01/04/2009 to 09/03/2015 (A.Y.s 2010-11 to 2015-16) are enclosed in pages 107 to 126 of the paper book. The Id. AO based on the statement recorded from these karigars concluded that the making charges is accepted only at Rs.3/- per gram and proceeded to disallow the excess making charges for A.Yrs. 2014-15 in the sum of Rs.49,83,491/- and Rs.25,40,622/- for A.Y.2015-16 respectively. The Id. CIT(A) prima facie dismissed the findings of the Id. AO as the disallowance has been made based on the statements recorded during the search. He further held that the making charges of the karigar are included in the wastage of gold in jewellery making and therefore no separate payments are required to be made to them for labour charges.

3.6. We find that the primary basis of making the addition is the excel sheets found and seized during the course of search, contents of which were explained by karigars i.e. Shri Lob Ghorai and Shri Golok Patra in their respective sworn statements. But it is pertinent to note that the said karigars had retracted their statements immediately after the search on the ground that the original statements were recorded from them under pressure and that the karigars were made to sign a pre-typed statements by the search parties. The retraction is made in the form of an affidavit in a non-judicial stamp paper on 18/03/2015 by Shri Lob Ghorai and on 11/05/2015 by Shri Golok Patra. Both these affidavits are forming part of the paper book filed and placed on record before us. In the said affidavit, both the karigars had affirmed that the concerned officer had given them a written statement and asked to sign under oath and did not even allow them to read the contents of the statement. Both the parties had even affirmed that the original statements were recorded under pressure from the Income Tax authorities and they were not having proper mental balance at the time of giving those statements. It was submitted by the Id. AR that the contents of the affidavit filed by the karigars gets further strengthened by the fact that Shri Lob Ghorai (karigar) is not even educated and does not know English, however, the entire statement has been recorded from him in English whereas the signature has been made by him in Bengali. This fact is evident from page 65 of the paper book containing the statement from Shri Lob Ghorai dated 09/03/2015. However, this is not the case with Shri Golok Patra in English. We find that Shri Golok Patra in his statement recorded on 09/03/2015 had replied vide reply to Question No.6 while explaining the modus operandi of the business, wherein he had stated that he would receive 24 carat gold bars from Gauti group, then he will mix alloy to make it 22 or 21 carat, thereafter, those gold bars along with alloy would be handed over by him to different karigars. During this process, little wastage would be incurred. After making jewellery, he would hand over the manufactured jewellery to Gauti group. The Id. AR submitted that this answer goes to prove that the making charges are to be paid to Mr. Golok Patra (karigar) and to other sub-karigars. Admittedly all those sub-karigars are engaged by the main karigar. The assessee is no way connected with the sub-karigars. The same is with the case of another Karigar Shri Lob Ghorai.

The Id. AR submitted that statement given to Shri Lob Ghorai and Shri Golok Patra is that only Rs.2/- to 3/- per gram has been charged as making charges, had to be understood in a way that they would be getting only Rs.2/- to 3/- per gram and remaining payments of Rs.10 to Rs.11/- per gram would be passed to the sub-karigars who actually engage in the manufacturing of jewellery. The Id. AR also drew the attention to the statement of Shri Lob Ghorai wherein the word "assessee" has been mentioned in several places. He argued that a layman like Shri Lob Ghorai while making a statement would never mention the word "assessee" instead would only refer in person by name. This goes to the prove that it is only a pre-typed statement given by the search party to Shri Lob Ghorai and Shri Lob Ghorai signing the same. Further, in response to Question No.12 by Shri Lob Ghorai, it has been stated that TDS is deducted on making charges at Rs.2/- per gram only which is factually incorrect as the TDS was deducted on the entire amount of Rs. 12/- to 13/- per gram. The Id. AR in this regard drew our attention to the ledger account of Shri Lob Ghorai enclosed in page 127 of the paper book. The Id. AR accordingly submitted that the statements recorded from Shri Lob Ghorai and Shri Golok Patra could not be relied upon at all as it contains (i) pre-typed statement given by the search party (ii) factually incorrect statements regarding TDS (iii) the word "assessee" being mentioned regularly by layman like Shri Lob Ghorai and Shri Golok Patra. Accordingly, he argued that the said statements which is the sole basis of making addition cannot be relied upon. Further, the Id. AR argued that the statements given by Shri Lob Ghorai and Shri Golok Patra that difference of Rs.10/- to Rs.11/- per gram towards making chares were withdrawn by them in cash and given back to the assessee is to be understood in the manner that the said cash payments were not given back to the assessee but instead paid to the small sub-karigars by them towards the work actually carried out by these sub-karigars in manufacturing of jewellery. In other words, the Id. AR submitted that the statements of Shri Lob Ghorai and Shri Golok Patra are to be understood in the following manner:-

- (a) Assessee will make Rs.12/- to Rs.13/- per gram to Shri Lob Ghorai and Shri Golok Patra towards making charges.
- (b) Shri Lob Ghorai and Shri Golok Patra being main karigars would retain Rs.2/- to Rs.3/- per gram as their making charges.
- (c) Shri Lob Ghorai and Shri Golok Patra will withdraw the cash i.e. Rs.10/- to Rs.11/- per gram and make payment to the sub-karigars engaged by them.
- (d) Shri Lob Ghorai had engaged 10 karigars and Shri Golok Patra had engaged 40 karigars.
- (e) No small sub-karigars would work without getting payment for their labour charges.

3.7. We find that there are certain factual inconsistencies in the statements recorded from both the karigars as detailed supra. In any event, it is a fact that both the karigars had duly retracted from their respective statements

vide retraction affidavit already placed on record. Hence, no statements of the karigar could be relied upon for the purpose of making addition in the hands of the assessee. It is not in dispute that the assessee while making payments to karigars had deducted tax on the entire payment of Rs. 12/- to Rs.13/- per gram towards making charges. The main karigars i.e. Shri Lob Ghorai and Shri Golok Patra had duly accounted the same as their income in their books and had offered the net profit earned by them in their respective tax returns. In this regard, for A.Y.2014-15, we find from the audited financial statement of Shri Lob Kumar Ghorai, he had received total making charges of Rs. 48,15,373/- from Gauti group which includes assessee also and had inturn made making charges to Rs.33,08,138/- to sub-karigars. Thereafter, total net profit from business declared by Shri Lob Ghorai for A.Y.2014-15 is Rs.4,76,716/-. If the contention of the Revenue that only Rs.3/- per gram should be accepted as making charges, then these karigars i.e. Shri Lob Ghorai and Shri Golok Patra could not have reported the net profits as they are reflected in their respective income tax returns. This is evident from the table shown below:-

Name of Karigar	A.Y.	Receipts of making charges from Gauti group ranging from Rs.12/- to Rs.18/- per gram	Net profit from business shown in the return
Shri Lob Ghorai	2012-13	50,86,852/-	4,42,048/-
	2013-14	31,76,043/-	4,27,113/-
	2014-15	37,31,598/-	4,76,716/-
Shri Golok Patra	2011-12	27,84,427/-	4,45,508/-
	2012-13	52,03,168/-	5,59,386/-
	2013-14	42,93,713/-	5,15,246/-
Shri Malay Kopat	2014-15	45,63,842/-	5,41,572/-
	2013-14	33,85,305/-	5,80,986/-
	2014-15	73,61,716/-	8,08,209/-
Shri Chinmay Kundu	2015-16	1,50,55,851/-	16,88,237/-
	2010-11	19,95,233/-	3,41,915/-
	2011-12	21,13,737/-	4,10,619/-
Shri Sankar Samanta	2012-13	12,89,683/-	5,34,654/-
	2012-13	17,04,184/-	4,55,568/-
	2013-14	25,47,699/-	5,76,830/-
	2014-15	58,03,158/-	7,10,400/-

3.8.If the making charges rate as determined by the Revenue at Rs.3/- per gram has to be considered, the aforesaid karigar's net profit declared by them from the business in their respective tax returns would be higher than the gross receipts of making charges at Rs.3/- per gram. This itself goes to prove that the making charges cannot be at Rs.3/- per gram. These facts and figures are staring on us to conclude that making charges paid by the

assessee ranging from Rs.12/- to Rs.13/- per gram is acceptable and correspondingly the making charges determined by the ld. AO @Rs.3/- per gram is devoid of merits and baseless.

3.9.Hence, from the above facts and figures, it could be safely concluded that the disallowance of making charges made by the ld. AO by placing reliance on the statements recorded from two karigars is totally baseless.

3.10.Now what remains to be addressed is the corresponding statement given by Shri Kirit Kumar Gauti, the key person of the group. The ld. AO in his assessment order had stated that the statements of karigars were confronted with Shri Kirit Kumar Gauti who had also accepted that actual making charges is only Rs. 3/- per gram and that the difference is received back from the karigars in cash. In this regard, Shri Kirit Kumar Gauti had indeed filed police complaint on 13/03/2015 i.e. within four days from the date of search, making various allegations against the search team stating that he was brutally beaten up by the search team during the course of search and forced to record and sign a statement in the manner in which the search team wanted to record. The copy of the said police complaint is enclosed in page 62 of the paper book. However, no finding is given by the lower authorities with regard to this complaint, hence, we do not deem it fit to get into this aspect of police complaint made by Shri Kirit Kumar Gauti, about the manner in which statements were recorded from him. However, we find that Shri Kirit Kumar Gauti had also retracted from his statement given on 09/03/2015 vide his retraction affidavit dated 18/03/2015 which is immediately after the search wherein he had affirmed that he was mentally put under pressure by the Income Tax authorities and he had lost his mental balance and accordingly, he had signed the statement without understanding the contents recorded thereon. He had also stated that under the threat from the department, he had no option but to agree on the dictated statement of the authority and signed on the said pre-written statement of the authority. It is pertinent to note that the said retraction affidavit was duly filed by the assessee before the Investigation Wing as well as before the ld. AO. Further, the promoter of the assessee group M/s. Sumatichand Gauti Jewellers had also categorically denied making payment of any excess making charges during the course of his statement on 12/03/2015 vide reply to Question No.62. Hence, the disallowance made based on statement from Shri Kirit Kumar Gauti also falls flat and deserved to be dismissed.

3.11.Even though the statements relied upon by the Revenue had been dismissed, the excel sheets were actually seized during the course of search. According to Income Tax department, the said excel sheets are parallel books maintained by the assessee. In this regard, we have gone through the said excel sheets which are enclosed in pages 107 of the paper book onwards. We find that these excel sheets are merely a quantitative tally meant for control purpose prepared by some employee of the assessee

company to meet the track of flow of stock of gold / jewellery. The said excel sheet can never be construed as the books of the accounts or the parallel books of account. The ld. AR submitted that the standard wastage and standard making charges had been mentioned by the employee who had maintained this quantitative data. This is recorded by the employee just to have a control as to the quantity of jewellery received back from the karigar after reducing standard wastage thereon. In fact, in para 16.11 of the order of the ld. CIT(A), it has been categorically mentioned by ld. CIT(A) that the said excel sheets reveal entries concerning issue and receipt of gold to the karigars along with necessary weight of said issues / receipts. The ld. CIT(A) observed that however, the completeness of the data in the excel sheets are indeed in doubt as far as overall picture of gold quantity is concerned. The ld. CIT(A) further observed that although in the top of the sheet, making charges rate @Rs.3/- per gram was mentioned, karigar wise computations are not made in the said excel sheets. The ld. CIT(A) also observed that the most significant deficiency noted in such excel sheet is that no wastage has been shown in the cases where the semi-finished jewellery has been manufactured by the karigars. Similarly, no wastage has been shown in cases where coins have been manufactured by the karigars. The ld. CIT(A) also observed that if the ld. AO's argument that "making charges are in the form of wastage" is to be accepted, then the inference would be that the karigars are working for free in respect of such semi-finished jewellery and coin manufacturing which would result in absurdity. The ld. CIT(A) also observed in para 16.12 of his order that the said excel sheet is not meant or used for making payment of making charges to various karigars or determining wastage. Further, the ld. CIT(A) in para 16.13 of his order had categorically stated that though the assessee had pointed out certain flaws with the maintenance of excel sheets, there is no doubt about the authenticity of transaction between the group and the karigars as far as the volume of gold is concerned. The ld. CIT(A) observed that **-to this extent, it is proposed to rely on the excel sheet. As noted above, it is possible to use the excel sheet for further computation if necessary corrections are introduced in the sheet to take care of some glaring omissions like non-computation of wastage on semi-finished jewellery and gold coins as well as the fact that there are evidences of making charges being made through allowing certain level of wastage of karigars.** These observations made by the ld. CIT(A) are not challenged by the revenue before us by bringing in any contrary evidences. Hence, we hold that excel sheets seized during the course of search cannot be construed as parallel books and they are merely controlling sheets maintained by employees for computation of jewellery after giving credit or deduction for standard quota of wastage. Hence, linking these excel sheets with the diaries marked as Annexure A-3 & A-7 would be incorrect. We find from the Annexure A-3 & A-7 notings contained in the diaries that they are merely rough jottings made by some employee and no way depict the cash receipt of the making charges from the karigars as alleged by the ld. DR herein. We find that the said diaries nowhere show that Rs.2/- per gram is retained with karigars

and remaining amount is given back to the assessee in the form of cash. Hence, reliance placed on those diaries as corroborative evidence is grossly incorrect. Moreover, we also find that the notings found in those diaries were relating to cash transactions for a limited period of time. The ld. AO in the instant case had extrapolated the same for the remaining period and disallowed the entire making charges debited over and above Rs.2/- per gram.

3.12. We find that the assessee had submitted the comparable price from the market with various parties which goes to prove that the making charges prevailing in the market are ranging from Rs.13 – Rs.18/- per gram. The gold receipt vouchers issued by P C Chandra Jewellers, Kolkata show making charges @Rs.18/- per gram. Even going by this comparable data, the making charges debited by the assessee is much lesser than the market price. Hence, there cannot be any disallowance of making charges on the ground that it is paid in excess by the assessee.

3.13. To sum-up, the disallowance made by the Revenue on account of excess making charges deserve to be deleted due to-

(a) Statements of karigars Shri Lob Ghorai and Shri Golok Patra containing various factual inconsistencies;

(b) Statements of Shri Lob Ghorai and Shri Golok Patra were retracted;

(c) Statement of Shri Kirit Kumar Gauti which stood subsequently retracted;

(d) Statement of promoter of the assessee group M/s. Sumatichand Gauti Jewellers wherein he had categorically denied making payment of any excess making charges during the course of his statement on 12/03/2015 vide reply to Question No.62;

(e) Excel sheet wrongly construed as parallel books but actually the excel sheets are meant only for quantitative date of gold / jewellery after giving due credit for standard wastage;

(f) The excel sheet did not contain any payment of making charges to the karigar which fact has been accepted by the ld. CIT(A) in his order;

(g) Rough jottings made in the diaries Annexure A-3 & A-7 are meant only for limited period of time and the ld. AO erred in extrapolating the same for the remaining period of time;

(h) Rough jottings made in the diaries did not contain any evidence or noting to prove that excess making charges paid by the assessee has been received back as cash from the karigars by the assessee;

(i) Comparable market price of P C Chandra Jewellers prove the payment of making charges at Rs.18/- per gram which is far higher than the making charges debited by the assessee herein.

3.14. In view of the above, the disallowance made on account of making charges amounting to Rs.49,83,491/- for A.Y.2014-15 is hereby directed to be disallowed. Accordingly, the ground Nos.2 & 3 raised by the assessee are allowed.

4.The ground Nos. 5 & 6 raised by the assessee for the A.Y. 2014-15 and ground Nos. 1-5 raised by the revenue are with regard to the disallowance made on account of wastage charges.

4.1.We have heard rival submissions and perused the materials available on record. The assessee had claimed wastage charges on an average ranging from 3-3.5%. The ld. AO by placing reliance on the statements recorded from karigars Shri Lob Ghorai and Shri Golok Patra and statement of Shri Kirti Kumar Gauti and excel sheets containing standard wastage percentage, arrived at the allowable wastage to be at 2.5%. According to the ld. AO, data of wastage recorded in the excel sheet seized contain the actual details of wastage. In the assessment order, the ld. AO compared the wastage appearing in the excel sheets with the wastage booked in the regular books of accounts and held that there is an excess reflected in the books and accordingly, proceeded to disallow the excess wastage for various assessment years as under:-

Particulars	AY 2013-14	AY 2014-15	AY 2015-16
Total wastage as per actual books (In Kgs.)	81.17	149.10	145.59
Total Wastage as per excel sheet (In Kgs.)	60.23	89.63	52.52
Difference (In Kgs.)	20.94	59.47	93.07
Proportionate addition in assessee	Nil*	82,42,155	98,81,191

* No business in assessee company in A.Y. 2013-14.

4.2. The ld. CIT(A) estimated the wastage at 3% to be reasonable on finished jewellery. Further, the ld. CIT(A) allowed wastage on semi-finished jewellery and coins on the ground that data contained in excel sheet had glaring omissions like non-computation of wastage of semi-finished jewellery and gold coins. Accordingly, the ld. CIT(A) granted relief to that extent and addition of Rs.15,06,455/- was confirmed by the ld. CIT(A) as against the addition made by the ld.AO in the sum of Rs.82,42,155/- made

by the Id. AO. Aggrieved, both the assessee as well as the revenue are in appeal before us against their respective grievances.

4.3.As held by us hereinabove for wastage charges, the statement of karigars and Mr. Kirit Kumar Gauti could not be relied upon as they stood retracted immediately after the search. Further, we had already held that seized excel sheets are only meant for control purpose maintained by an employee to keep a track of flow of stock and that the said excel sheets cannot be construed as actual books or parallel books. From the perusal of the said excel sheets enclosed in page 107 of the paper book onwards, we find that the said sheets do not contain actual wastage. The employee who had maintained the said data had only mentioned the standard wastage percentage uniformly for all the years only to ensure that the quantity of raw material issued to the karigars and finished product received back from them are within the expected tolerance range of wastage. Hence it could be concluded that the excel sheet is meant for control for the purpose of quantitative tally of flow of stock. As stated at the cost of repetition, we would like to state that the receipt mentioned in the said excel sheet is only standard / fixed percentage of wastage allowed to the concerned karigar. This is evident from the excel sheets wherein for the period 01/09/2014 to 09/03/2015 pure gold received from the karigars was 79589.58 and standard wastage of 2.25% worked out at 1790.77 grams is mentioned has been computed and the resultant figure of 81,380.34 gms (78689.58 gms representing pure gold + 1790.77 representing wastage worked out at 2.25% of pure gold received) is shown as gold received back from karigar. It is inconceivable that the wastage remains at the standard percentage of 2.25% per each quantity of gold issued to karigar. This itself goes to prove that the excel sheet data does not contain actual wastage. But the data is maintained by the employee to keep the track of manufacturing of gold. We find that in the jewellery industry, the wastage of each jewellery would be depending upon the shape, size, design of the jewellery etc., Therefore, the adoption of fixed percentage of wastage in excel sheet data maintained by an employee cannot be used by the Revenue for arriving at the acceptable wastage and disallowing the remaining portion as excess. From the perusal of the excel sheet maintained by the employee, forming part of the seized document, we find that the balance figure of gold lying with smith i.e. karigar is also derived figure and not actual figure. This itself proves the fact that excel sheet has been prepared purely for control purposes and not for recording the actual wastage. The Id. CIT(A) had already taken cognizance of various discrepancies that had crept in in the excel sheets maintained by the employee for which suitable credit has already been given to the assessee. Hence, the excel sheet data, in our considered opinion, is unreliable. Moreover, we find that the Id. AO had disallowed the wastage expenses as excess only for A.Y.2013-14, 2014-15 and 2015-16 by placing reliance on the excel sheet as sacrosanct. Whereas the same excel sheets contains data from A.Y.2010-11 onwards which was also seized during the course of search. For A.Yrs.2010-11, 2011-12 and 2012-13, the

wastage reflected in excel sheet was much higher than the wastage reflected by the assessee in its books. Hence, the Id.AO had resorted to ignore those excel sheets for A.Yrs.2010-11, 2011-12 and 2012-13 as it is favouring assessee. The following tabulation would prove this fact:-

Financial Year	Assessment Year	Wastage claimed in books in Kgs (A)	Wastage as per excel sheets in Kgs (B)	Difference in Kgs (A-B)
FY 2009-10	AY 2010-11	53.70	81.75	-28.05
FY 2010-11	AY 2011-12	44.95	62.20	-17.25
FY 2011-12	AY 2012-13	48.81	58.40	-9.59
FY 2012-13	AY 2013-14	81.17	60.23	20.94
FY 2013-14	AY 2014-15	149.10	89.63	59.47
FY 2014-15	AY 2015-16	145.59	52.52	93.07

4.3.1.No assessee would record lesser wastage in its books than what has been actually incurred by it since the same would lead to shortage in the gold quantity. This itself goes to prove that the excel sheet did not record the actual wastage incurred by the assessee and is meant purely for control purpose only and not otherwise.

4.4. Further, with respect of entries of wastage being received back from karigars to the appellant as alleged by AO, it is submitted that said notings are not receipt of wastage; rather the same are domestic purchase which are used in the manufacturing process in order to compensate the excess loss in the jewellery making. Moreover, such purchases are issued to karigars and not received from karigars which is duly reflected in the excel sheet. This fact has been duly considered and accepted by CIT(A) in para 16.31 at page no. 67 of the appellate order. Therefore, the said allegation of the Id. AO is incorrect.

4.5. It is pertinent to note that during the course of search, no discrepancy in physical stock was found by the search team. In fact physical verification of bullion was carried out by the search team and it had tallied with the book stock. Though some addition was made by the Id. AO in the sum of Rs.140,89,130/- towards unaccounted stock, the same was deleted by the Id. CIT(A), on the ground that the said addition has been made completely relying on the excel sheet seized during the course of search ignoring the factual deficiencies in those excel sheets. Against this deletion, the revenue had not preferred any appeal before us.

4.6. We find that Gems and Jewellery Council of Government of India had also accepted the normal standard wastage in respect of gold at 3.5%. The evidence in this regard was placed by the Id. AR in page 253 of the paper book. The wastage claimed by the assessee in the present case ranges from 3-3.5% which is in consonance with the Government approved standard of 3.5%. Moreover, the assessee had indeed given comparable

cases of wastage from P C Chandra Jewellers, Kolkata wherein wastage is mentioned at 3.75%; Deys Guinea House, Kolkata at 4% ; SremonJewellers, Kolkata at 6% ; SremonJewellers at 5.5% on yet another date etc. This goes to prove that the wastage claimed by the assessee is much less than both the Government approved standard as well as the wastage claimed by the comparable cases. It is also pertinent to note that the aforesaid Government of India norms of allowing wastage at 3.5% has been followed and accepted by the Co-ordinate Bench of Kolkata Tribunal in the case of Anjali Jewellers Pvt. Ltd., vs. DCIT in ITA No.2252/Kol/2014 for A.Y.2010-11 dated 21/03/2016. In view of the aforesaid observations and respectfully following judicial precedents relied upon hereinabove, we hold that there is absolutely no case made out by the Revenue to disallow the wastage expenses on the ground that it is excess. The ld. AO is hereby directed to delete the entire disallowance made on account of wastage. Accordingly, the ground Nos. 5 & 6 raised by the assessee are allowed and ground Nos. 1-5 raised by the Revenue are also hereby dismissed.”

It is pertinent to note that there was a typographical error in Paragraph 3.14 of the order, i.e., instead of mentioning that the addition is “directed to deleted”, it was erroneously mentioned as “directed to be disallowed”. The above said mistake was corrected by the co-ordinate bench, vide its corrigendum dated 03-01-2023.

5.2 Since the facts and circumstances relating to both these additions are same in these cases also, following the above said decision of the co-ordinate bench, we direct deletion of additions relating to Making Charges and Wastage claims in the respective years.

6. The revenue is contesting the relief granted by Ld CIT(A) in respect of addition relating to “Profit on unrecorded sales”. This addition has also been made by the AO on the basis of Excel Sheets found during the course of search. We noticed earlier that the data maintained in the Excel Sheet was considered to be parallel books by the AO and accordingly made additions. The quantity of gold shown in the Excel sheet was found to be lower than the quantity of gold disclosed in the books of accounts of the assessee. The AO treated the shortage in the gold stock as sale outside the books of accounts and accordingly estimated the profit on unrecorded sales @ 2% and added the same.

6.1 Before Ld CIT(A), the assessee demonstrated various discrepancies in the data recorded in the Excel Sheets and accordingly contended that the Excel Sheets cannot be taken as the correct one. The Ld CIT(A) was convinced with the contentions of the assessee and accordingly deleted this addition in various years in the hands of all group concerns. The decision rendered by Ld CIT(A) on this issue is extracted below:-

7.5 The main submission of the appellant is that the ledger of receipt and issue of gold maintained in the excel sheet do not represent complete books of account but merely an account of the gold received from banks and the subsequent ledger of gold issued to the karigars for manufacturing and the subsequent receipt of jewellery from them. It is claimed that such ledger does not contain the entire transactions related to gold manufacturing. As an example, it has been claimed that the manufacturing of medallions and gold coins, which constitute significant component of the assessee's manufacturing and export activity do not form a part of the excel sheet and has been maintained separately through a different passbook. The wastage made on manufacturing of these items, although a matter of record, do not form a part of computation of stock with the karigars. The assessee has also cited instances where sales made have been reflected as amounts issued in the hands of karigars (basically indicating that the linkages created in the software are not correct).

7.6 The assessee has also submitted that the stock of the assessee has been elaborately taken at the time of search action and no difference in stock has been noted by the authorized officers at any of the premises, clearly indicating that the stock as per the regular books has been properly maintained and the excel sheets on their own do not reflect the true stock position of the companies. It is further claimed that the assessee purchases gold from authorized dealers for the purpose of export. There is no evidence of local unaccounted sale unearthed by the search party. The goods are duly exported in the quantity in which the purchases are made. As such, the allegation of unaccounted sale of accounted gold is presumptuous and incorrect. Pointing to the fact that the total closing stock of gold in the hands of the assessee comprises of gold with the karigars as well as gold lying in the premises of the assessee, it is claimed that the AO has presumed that total closing stock of gold in the hands of the assessee is the gold lying with the karigars as represented by the excel sheet.

7.7 It is noted that the AO has computed the stock difference based on the position of gold in the hands of karigars and closing stock position as reflected in the books of the appellant as on 31st March of the concerned financial years. The submission made by the assessee that the position of

gold with karigars as contained in the excel sheet does not represent the final position of gold stock lying with the assessee is found tenable looking at the following facts:

i. The excel sheet does not contain export details but merely the details of gold lying with the karigars. There is distinct possibility of gold lying with the assessco which has not been exported but has been received from the karigars. The regular books do not reveal the fact that all the gold forming a part of closing stock is lying with karigars. Hence, the total quantity of gold lying with the karigars at any point of time does not reflect the stock of gold lying with the assessee.

ii. As seen from manufacturing of medallions and coins, part of the manufacturing process is outside the excel sheet and needs to be incorporated to arrive at the final stock position.

iii. The physical stock position of the assessee as computed by the Department at the time of search and seizure action did not detect any variation between the physical stock position and the stock as per books of account. Also, the stock taken by the Department reveals that the gold stock was not only with the Karigars but part of the gold was also lying with the assessee itself.

iv. Evidence of sale of gold items outside the books has not been found from any of the premises during the search proceedings including the secret premises.

v. While dealing with the issue of wastage / payment of making charges, it has been held that the excel sheets are not sacrosanct and do not represent complete books of account and need to be corrected for various non-inclusions in order to arrive at the correct position of business of the various assessees.

vi. There is no breakup for earlier years with respect to gold with the assessee and gold with karigars and hence revisiting the stock position based on excel sheet is not accurate.

7.8 In light of the above facts, the action of the AO in relying completely on the excel sheet ignoring the above factual deficiencies in these sheets while computing the stock position of the appellant for earlier years is not found to be in order. It is also noted that while dealing with the issue of wastage claim of the appellant wherein it has been held that the assessee has indeed been charging excess wastage in its books, corrections were found necessary to decide the issue of quantum of wastage. The changes in stock on account of wastage also need to be factored while computing stock position. Merely taking the quantum of gold available at the karigar's place and comparing with the closing stock of the year, in my view, could not be

the correct way of computing stock difference. The AO has wrongly presumed that this differential amount represents correct of the stock of gold and the only explanation would be that this gold has been sold by the assessee outside books of account. Hence, the action of the AO in treating the difference between the stock of gold with karigars and the closing stock value shown in the books of different entities for different years is not found to be a reliable method to determine the stock difference and cannot be accepted. The AO is directed to delete the addition made by presuming that the shortage in stock represents unaccounted sales and estimating a profit of 2% on such sales.

6.2 In the case of Saurav Jewellers Private Limited (supra), the co-ordinate bench has accepted the contentions of the assessee that the Excel Sheets cannot be considered as parallel books of account and they are merely controlling sheets maintained by employees for computation of jewellery after giving credit or deduction for standard quota of wastage (paragraph 3.11). We notice that the Ld CIT(A) has also noticed many discrepancies in the Excel Sheet. One of the main discrepancies is that the manufacture and sale of medallions and coins were not recorded in the Excel Sheets, which would make huge difference. Besides the above, the search officials did not find any discrepancy between book stock and physical stock. Accordingly, we are of the view that the order passed by Ld CIT(A) in deleting this addition is a well reasoned order and the same does not call for any interference. Accordingly, we uphold the order passed by Ld CIT(A) on this issue.

7. In the result, both the appeals of the assessee are allowed and the appeal of the revenue are dismissed.

Order pronounced in the open court on 10th July, 2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 10th July, 2023

SSL

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai